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Yero v. Miami-Dade County
Fla.App. 3 Dist.,2003.

District Court of Appeal of Florida,Third District.
Yudi YERO, as Personal Representative of the Estate
of Juan Suarez, Deceased, Appellant,

v.

MIAMI-DADE COUNTY, Montenay-Dade Ltd., and
Montenay Power Corp., Appellees.

No. 3D01-823.

March 5, 2003.

Wife of the employee of an independent contractor brought wrongful death action against a general contractor and the county, arising from employee's electrocution during a work-related accident. The Judicial Circuit Court, Miami-DadeCounty, [Margarita Esquiroz](#), J., granted summary judgment in favor of general contractor and county. Wife appealed. The District Court of Appeal, [Fletcher](#), J., held that: (1) general contractor was entitled to workers' compensation immunity from wife's action; (2) county was an employer of the deceased employee for purposes of workers' compensation statute; and (3) county was also entitled to entitled to workers' compensation immunity from action.

Affirmed.

West Headnotes

[1] Workers' Compensation 413 ↪2165

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)1 Right of Action of Employee or Representative Generally

413k2160 What Persons Liable as Third Persons

413k2165 k. General, Principal, or Original Contractor Contracting with Employer of Injured Person. [Most Cited Cases](#)

General contractor was entitled to workers' compensa-

tion immunity from the wrongful death action by the wife of an independent contractor's employee who was electrocuted in a work-related accident, where independent contractor had secured workers' compensation for its own employees and had paid workers' compensation death benefits to wife. [West's F.S.A. § 440.10\(1\)\(b\)](#).

[2] Workers' Compensation 413 ↪350

413 Workers' Compensation

413V Employees Within Acts

413V(G) Employees of Contractor or Subcontractor

413k350 k. Persons Employed by Contractor or as Employees of Principal or of Contractor. [Most Cited Cases](#)

County was an employer of employees of an independent contractor for purposes of the workers' compensation statute, where county maintained a contract with a power company which required county to maintain and utilize a premises to generate electricity and sell it to company, and independent contractor was hired to fulfill one county's contractual obligations to power company. [West's F.S.A. § 440.10\(1\)\(b\)](#).

[3] Workers' Compensation 413 ↪2165

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)1 Right of Action of Employee or Representative Generally

413k2160 What Persons Liable as Third Persons

413k2165 k. General, Principal, or Original Contractor Contracting with Employer of Injured Person. [Most Cited Cases](#)

County was entitled to workers' compensation immunity from wrongful death action by wife of an independent contractor's employee who was electrocuted in a work-related accident, where county was an employer for purposes of workers' compensation

statute, and independent contractor had secured workers' compensation for its own employees and had paid workers' compensation death benefits to wife. [West's F.S.A. § 440.10\(1\)\(b\)](#).

Leeds, Colby & Paris; [Lauri Waldman Ross](#), Miami, for appellant.

Kubicki Draper and [Angela C. Flowers](#), Miami, for appellees.

Before [COPE](#), [GODERICH](#), and [FLETCHER](#), JJ.

[FLETCHER](#), Judge.

Yudi Yero, the Personal Representative of the Estate of Juan Suarez, Deceased, seeks to reverse an adverse final summary judgment. We affirm.

Yero's husband, Juan Suarez, was an employee of HBH Industrial Service [HBH], a subcontractor engaged to repair *687 certain trash conveyors (trommels) at Miami-Dade County's [County] Resource Recovery Plant [RRP] facility. The RRP is a trash recycling, burning, and landfill facility owned by the County. As the premises owner the County had contracted with Florida Power Corporation to use the premises to produce electricity and sell it to Florida Power Corporation. Montenay [FN1](#) is under contract with the County for the operational management of the RRP.

[FN1](#). Montenay-Dade, Ltd. and its general partner Montenay Power Corporation are related entities but separate defendants, and will be referred to jointly as "Montenay."

While performing his duties as an HBH employee Suarez was electrocuted. Yero filed a multiple-count wrongful death action against Montenay and the County alleging negligent maintenance of the work site, failure to adopt and maintain adequate safety standards, failure to supervise, and failure to warn. The County and Montenay defended on the basis that the claims against them were barred by workers' compensation immunity.

[\[1\]\[2\]\[3\]](#) We agree with the trial court, which correctly determined that the County and Montenay are entitled to workers' compensation immunity pursuant to [section 440.10\(1\)\(b\), Florida Statutes \(1995\)](#). That section provides:

"In case a contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment; and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, *except to employees of a subcontractor who has secured such payment.*" [e.s.]

HBH, as previously noted, is an independent subcontractor hired by Montenay to fulfill one of Montenay's contractual obligations to the County, i.e., maintaining the trommels. This subcontract relationship made Montenay a statutory employer of the employees of HBH. *See Gator Freightways, Inc. v. Roberts, 550 So.2d 1117 (Fla.1989)*. HBH, however, secured the payment of workers' compensation for its own employees and upon Suarez's death HBH's workers' compensation carrier paid benefits to Yero. Under these circumstances Montenay is immune from suit.

As to the County, its 440.10(1)(b) immunity arises out of its having contracted with Florida Power Corporation. The contractual arrangement requires the County to maintain and utilize the premises to generate electricity and sell it to Florida Power Corporation. This makes the County a contractor within the meaning of the statute. *See Miami-Dade County v. Acosta, 757 So.2d 539 (Fla. 3d DCA 2000)*. As HBH secured payment of workers' compensation, the County is immune from suit.

Affirmed.

Fla.App. 3 Dist.,2003.

Yero v. Miami-Dade County

838 So.2d 686, 28 Fla. L. Weekly D613

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